UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
V.	:	**CR. No. 05- 114S**
	:	
ROBERT VIRUET	:	

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR CREDIT TO SENTENCE

Now comes the United States of America, by and through its attorneys, Robert Clark Corrente, United States Attorney, and Stephanie S. Browne, Assistant United States Attorney, and hereby responds to defendant's Motion for Credit to Sentence.

Defendant has filed the instant motion in order to obtain credit against his federal sentence for time spent in state custody. He cites as support for this request the provisions of 18 U.S.C. § 3585(b). This motion should be denied.

Viruet has failed to consider the holding in United States v. Wilson, 503 U.S. 329 (1992). The Supreme Court held that "§ 3585(b) does not authorize a district court to compute the credit [due a defendant] at sentencing." Id. at 334. The Court went on to note that "[a]fter a district court sentences a federal offender, the Attorney General, through the BOP, has the responsibility for administering the sentence. . . . Because the offender has a right to certain jail-time credit under § 3585(b), and because the district court cannot determine the amount of the credit at sentencing, the Attorney General has no choice but to make the determination as an administrative matter when imprisoning the defendant." Id. at 335.

The First Circuit has addressed this issue as well. In Rogers v. United States, 180 F.3d 349 (1st Cir. 1999), the Court stated that "it is well established that a request for credit for prior custody under 18 U.S.C. § 3585(b)(2) must be made, in the first instance, to the Attorney general through the Bureau of Prisons upon imprisonment after sentencing." Id. at 357-58. If a prisoner believes that such credit is inappropriately computed or denied, he may appeal through established administrative procedures. Once those have been exhausted, "prisoners may then seek judicial review of any jail-time credit determination by filing a habeas petition under 28 U.S.C. § 2241." Id. at 358.

Therefore, this Court should deny this motion and Viruet's request should be made to the Bureau of Prisons. If, after he has exhausted his administrative remedies, he is still dissatisfied, he may file a habeas petition under 28 U.S.C. § 2241 in the district in which he is incarcerated.

Respectfully submitted,

UNITED STATES OF AMERICA,

By its Attorneys,

ROBERT CLARK CORRENTE
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2006, I caused the within Government's response to Defendant's Motion for Credit to Sentence to be electronically filed with the United States District Court for the District of Rhode Island, using the CM/ECF System. The following participant has received notice via ordinary mail and postage prepaid, to:

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Donald C. Wyatt Detention Facility
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